

APPEAL NO. 171727
FILED SEPTEMBER 20, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 7, 2017, with the record reopened on June 19, 2017, and closed on June 20, 2017, in (city), Texas, with (administrative law judge (ALJ)) presiding as the (ALJ).¹ The ALJ resolved the disputed issues by deciding that the compensable injury of (date of injury), extends to a concussion without loss of consciousness but does not extend to post-concussion syndrome, radiculopathy, post-traumatic syndrome, or neurocognitive disorder and that the appellant (claimant) had disability resulting from the compensable injury beginning on April 18, 2016, and continuing through the date of the CCH.

The claimant appealed that portion of the ALJ's extent-of-injury determination that was adverse to her, arguing that the evidence established that the compensable injury extends to those other conditions the ALJ determined were not part of the compensable injury. The claimant further objects to the ALJ's reopening of the record on June 19, 2017, to request and accept a written stipulation which, the claimant argues, she had no notice of and to which she did not agree.

The respondent (self-insured) responded, urging affirmance.

The ALJ's determination that the compensable injury of (date of injury), extends to a concussion without loss of consciousness was not appealed and has become final pursuant to Section 410.169.

The ALJ's determination that the claimant sustained disability as a result of the compensable injury of (date of injury), beginning on April 18, 2016, and continuing through the date of the CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The claimant testified that she was injured on (date of injury), when the automobile she was driving was struck from behind by another motor vehicle. The parties stipulated during the CCH, in part, that the claimant sustained a compensable injury on (date of injury); that the self-insured has accepted as compensable whiplash,

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

post-traumatic headache, neck strain, and back strain; and that the Texas Department of Insurance, Division of Workers' Compensation selected (Dr. W) as designated doctor to determine extent of injury, maximum medical improvement (MMI), impairment rating (IR) and ability to return to work.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to post-concussion syndrome, radiculopathy, post-traumatic syndrome, or neurocognitive disorder is supported by sufficient evidence and is affirmed.

STIPULATION

On June 19, 2017, the ALJ reopened the record on her own motion for the purpose of requesting from the parties an additional stipulation of fact as described in the Statement of the Case section of her Decision and Order, as follows:

On June 19, 2017, the record was reopened to modify the stipulations to include the MMI and IR agreement reached during the benefit review conference [BRC]. Both parties were afforded the opportunity to object to the admission of [HO Exhibit No. 3]. The record was closed on June 20, 2017, after both parties stated that they had no objections to the admission of [HO Exhibit No. 3].

In her Decision and Order the ALJ included the following stipulation as Finding of Fact No. 1.F.:

1.F. At the [BRC], per the June 26, 2016, certification issued by designated doctor [Dr. W], [the] [c]laimant reached MMI on April 18, 2016, with a [five percent] IR.

The issues of MMI and IR were not certified by the benefit review officer for resolution at the CCH. The claimant, in her appeal, expressly denies that she agreed to any such resolution of the issues of MMI and IR; that she was aware of the ALJ's request to add Finding of Fact No. 1.F; or that she agreed to add Finding of Fact No. 1.F.

Under the specific facts of this case, we hold that there is insufficient evidence to establish that the claimant agreed to the requested written stipulation contained in the ALJ's decision as Finding of Fact No. 1.F. We accordingly strike Finding of Fact No. 1.F. and affirm as reformed the ALJ's decision that the compensable injury of (date of injury), does not extend to post-concussion syndrome, radiculopathy, post-traumatic syndrome, or neurocognitive disorder.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 WEST 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge